

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

MARTEZ HOWARD,	:	MOTION TO VACATE
Movant,	:	28 U.S.C. § 2255
	:	
v.	:	CRIMINAL ACTION NO.
	:	1:10-CR-0121-ODE-GGB
	:	
UNITED STATES,	:	
Respondent.	:	CIVIL ACTION NO.
	:	1:12-CV-1552-ODE-GGB

**FINAL REPORT AND RECOMMENDATION**


Movant, Martez Howard, seeks via 28 U.S.C. § 2255 to challenge the constitutionality of his 190-month sentence that was imposed on October 27, 2011, following the entry of his guilty plea on June 14, 2011. [Docs. 58, 70, 73]. This matter is before me on Movant’ motion to withdraw or dismiss his § 2255 motion. [Doc. 81].

Because Respondent has filed a response to the motion, Movant cannot voluntarily dismiss his petition without an order of the court. *See* Fed. R. Civ. P. 41(a)(2) (stating that “[a]n action shall not be dismissed at the plaintiff’s instance save upon order of the court and upon such terms and conditions as the court deems proper.”). In light of Movant’s desire to dismiss his § 2255 motion, I find that dismissal is appropriate.

Accordingly, **I RECOMMEND** that Movant's motion to withdraw or dismiss his § 2255 motion [Doc. 81] be **GRANTED** and that Movant's § 2255 motion be **DENIED WITHOUT PREJUDICE**.

The Clerk is **DIRECTED** to terminate the referral to me.

**IT IS SO RECOMMENDED**, this 6th day of August, 2012.

  
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GERRILYN G. BRILL  
UNITED STATES MAGISTRATE JUDGE